

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN J. BANK,

Petitioner

v.

ANN ELWORTH-WINNER,

Respondent

Case No.: 2:21-cv-01218-JAD-VCF

Order Dismissing Action

Petitioner Steven J. Bank filed this pro se petition for writ of habeas corpus under 28 U.S.C. § 2254 but failed to pay the \$5.00 filing fee or submit a completed application to proceed *in forma pauperis*. As a result, this case has not been properly commenced.

It also appears that this case is defective because petitioner has not exhausted his state-court remedies. A federal court will not grant a state prisoner's petition for habeas relief until the prisoner has exhausted his available state remedies for all claims raised.¹ A petitioner must give the state courts a fair opportunity to act on each of his claims before he presents those claims in a federal habeas petition.² A claim remains unexhausted until the petitioner has given the highest available state court the opportunity to consider the claim through direct appeal or state collateral review proceedings.³ Bank is in pretrial detention and challenges the evidence against him in a Las Vegas Municipal Court traffic case. While the procedural posture is not entirely clear, he

¹ *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b).

² *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); *see also Duncan v. Henry*, 513 U.S. 364, 365 (1995).

³ *See Casey v. Moore*, 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v. McCarthey*, 653 F.2d 374, 376 (9th Cir. 1981).

1 refers to a challenge to the viability of his case in that court and states that he filed that motion on
2 June 22, 2021. He does not state that that motion has been resolved or that he has pursued a state
3 habeas corpus action. Therefore, it appears this federal petition is also unexhausted and
4 premature.


5 IT IS THEREFORE ORDERED that this federal petition **IS DISMISSED** without
6 prejudice to petitioner filing a new federal habeas petition, in a new case with a new case number
7 and a new, completed application to proceed *in forma pauperis* with the required financial
8 information or the \$5.00 filing fee.

9 IT IS FURTHER ORDERED that the Clerk is directed to FILE the petition [ECF No. 1-
10 1].

11 IT IS FURTHER ORDERED that a certificate of appealability is denied because jurists
12 of reason would not disagree with this outcome.

13 IT IS FURTHER ORDERED that the Clerk is directed to ENTER JUDGMENT
14 accordingly and CLOSE THIS CASE.

15 Dated: July 29, 2021

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17 U.S. District Judge Jennifer A. Dorsey
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